IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1521 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

B B CHAUHAN

Appearance:

MR HC RAVAL for Petitioner

MR YN OZA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval has appeared for the petitioner. Learned advocate Mr. Oza has remained present for the respondent workman.

The facts of the present petition, in short, are that the respondent was working with the petitioner corporation as conductor at Idar Depot of Himatnagar

since many years. On 10th November, 1981 when the respondent was on duty as such, the allegations were made against the respondent that at the time of checking by the checking party, four passengers were found without tickets from whom the respondent had already recovered the fares and the tickets were not punched and one passenger was found without ticket. Of course, no fare was collected. On the basis of the charge of said misconduct alleged to have been committed by the respondent, chargesheet was issued and thereafter departmental inquiry was initiated and ultimately, the respondent was dismissed from service on 7.7.1982. Said dismissal order was challenged by the respondent before the labour Court Ahmedabad in Reference No. 1415 of 1984. Before the labour court, statement of claim was filed by the respondent workman and reply thereto was also filed by the petitioner corporation. Vide purshis filed by the respondent workman before the labour court, the respondent workman has submitted that he is not challenging the legality and validity of the departmental inquiry which was conducted against him vide Exh. 6 and also not led any oral evidence before the labour court. Simultaneously, no evidence was led by the corporation before the Corporation.

Thereafter, the labour court has considered the documentary evidence which was produced before it and came to the conclusion that the punishment of dismissal from service was disproportionate and the labour court ordered reinstatement of the respondent with continuity of service but without back wages for the intervening period under its impugned award dated 13.6.1988.

It has been contended by the learned advocate appearing for the petitioner that the labour court has not applied mind in respect of the misconduct alleged to have been committed by the respondent workman and has erred in ordering reinstatement of the respondent workman. It was also contended that the labour court ought to have imposed some punishment to the respondent workman for committing such a serious misconduct which was proved to have been committed by the delinquent.

I have considered the submissions made by the learned advocates for the parties and have also considered the reasons given by the labour court in para 18 of the impugned award that the misconduct which was alleged to have been committed by the respondent was found to be proved and the intention to misappropriate the amount was also proved before the labour court. The labour court has come to the conclusion that it was a

serious misconduct committed by the respondent workman. According to my view, denial of back wages which was considered to be the punishment by the labour court in absence of the workman for unemployment having no relevancy and the same cannot be considered to be the punishment. It is the duty of the respondent workman to prove the unemployment before the labour court by leading oral evidence and then, he would be entitled to claim back wages for the intervening period provided that he succeeds in establishing that the order of punishment is bad or harsh and disproportionate to the misconduct proved against him. In the case before hand, the respondent workman was not at all examined before the labour court and he has not proved the unemployment part during the intervening period and, therefore, mere denial of back wages for the intervening period cannot be considered to be the punishment, in the facts and circumstances of the present case. In my view, in view of the misconduct proved against the respondent, some punishment is required to be imposed by the labour court. But the labour court has not at all considered that aspect while coming to the conclusion that the punishment of dismissal is disproportionate to the guilt established against the respondent, which, according to me, is not proper. Therefore, considering the entire evidence and the award passed by the labour court and looking to the misconduct which was committed and found to be proved by the workman and considering his past record, as per my view, it would be just and proper to direct the petitioner corporation to stop four annual increments of the respondent workmen with future effect from 1st January, 1999 in view of the misconduct proved against the respondent workman which punishment shall have no retrospective effect at all and which will not result in reduction of the salary of the respondent workman and consequently, no recovery shall be required to be made. Accordingly, this petition is partly allowed. The petitioner Corporation is directed to stop four annual increments of the respondent workman with future effect from 1st January, 1999. The impugned award passed by the labour court in respect of reinstatement of service of the respondent workman without back wages for the intervening period shall remain in tact and the punishment of stoppage of four annual increments with future effect from January, 1999 is the only modification in the award passed by the labour court. Rule is accordingly made absolute to the above extent with no order as to costs.

At the time of issuing rule in this matter, this court has issued notice as to interim relief and

thereafter, the matter was heard for grant of interim relief on 3.4.89 and, thereafter, interim relief was granted by this Court subject to the compliance of the provisions of section 17B of the Industrial Disputes Act, 1947. Therefore, in view of the interim relief granted by this Court, if the workman has not been reinstated in service so far, the petitioner corporation shall reinstate the respondent workman in service and shall pay him salary from the date of the impugned award till the actual date of reinstatement treating him to be on duty from the date of award with all consequential benefits. While calculating the salary of the respondent for the period from the date of the award till the date of his actual reinstatement in service, the petitioner corporation shall adjust the amount which the workman has received in view of the compliance of sec. 17B of the Industrial Disputes Act pursuant to the interim relief granted by this Court. The petitioner corporation shall pay the past salary of the respondent corporation within three months from the date of receipt of certified copy of this order and shall reinstate the respondent in service within one month thereof.

8.10.1999. (H.K.Rathod,J.)

Vyas